610 or, in emergencies, for those who are eligible for treatment under that section, or who are receiving care under 38 U.S.C. 612 (f) and (g). This authorization pertains only to circumstances in which VA facilities are not capable of furnishing or continuing to furnish the care or services required because of the furnishing of care and services to members of the Armed Forces. (38 U.S.C. 5011A, Pub. L. 97-174)

[FR Doc. 84-3975 Filed 2-13-84; 8:45 am]
BILLING CODE 6320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2525-5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On January 21, 1981, Indiana submitted its revised malfunction regulation, 325 IAC 1.1-5, to EPA as a revision to the Indiana State Implementation Plan (SIP). EPA proposed to approve it on December 3, 1982 (47 FR 54476). Comments were received from various Indiana companies and the State. Based on EPA's analysis of the regulation and the comments received, EPA today is approving 325 IAC 1.1-5.

EFFECTIVE DATE: This final rulemaking becomes effective on March 15, 1984.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Robert B. Miller at (312) 886-6031 before visiting the Region V Office.)

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On January 21, 1981, Indiana submitted its revised malfunction regulation, 325 IAC 1.1-5, to EPA.[1] On July 2, 1982, Indiana clarified its intent concerning 325 IAC 1.1-5, as discussed below.

Revised 325 IAC 1.1-5 applies to sources which have the potential to emit the following amounts of pollutants before controls: Total suspended particulate (TSP)—25 pounds/hour or more; sulfur dioxide (SO_2) and volatile organic compound (VOC)—100 pounds/hour or more; and all other pollutants—2,000 pounds/hour or more.

The regulation requires a source:

(1) To develop a preventive maintenance plan and to prepare and maintain a malfunction emission reduction program,

(2) To correct a malfunction as expeditiously as practicable and to minimize the impact of the excess emissions,

(3) To keep records of all malfunctions which cause the source's emission limits to be violated, and

(4) To notify Indiana immediately of such malfunctions which last for more than one hour.

The regulation also prescribes actions which the State can take to address malfunction situations. Except for certain reporting requirements, the regulation does not address excesses due to start-ups and shutdowns. Start-ups and shutdowns are not malfunctions as defined in the definition section of Indiana's regulations, 325 IAC 1.1-1. However, malfunctions occurring during start-ups and shutdowns would fall within the scope of 325 IAC 1.1-5.

EPA reviewed 325 IAC 1.1-5 and requested that Indiana clarify two points. Indiana responded in a July 2, 1982 letter as follows:

(1) Sections 2 and 4 require information to be submitted to the State if a malfunction occurs. EPA asked the State whether it is considered to be a violation of the regulation if a source provides incomplete or inaccurate information. Indiana responded that incomplete or erroneous malfunction reports would be treated as violations of the regulation.

(2) Sections 4(a)(3) and 5(a) refer to sources where malfunctions occur more than 5% of the normal operational time [2] for any one control device or combustion or process equipment. EPA asked the State whether these provisions automatically exempt sources which malfunction less than 5% of the time or are only a guideline to be used in conjunction with the other criteria listed in Section 4(a) in determining a violation. The State responded that the 5% figure is only a guideline to be used in determining appropriate action.

Based on EPA's excess emissions policy and the clarifications supplied by the State, EPA proposed to approve revised 325 IAC 1.1-5 on December 3, 1982 (47 FR 54476).[3] EPA noted in this proposal that, if it ultimately approved 325 IAC 1.1-5, it would treat any incomplete or erroneous information provided by a source as a violation of this regulation. Additionally, it would use the 5% criterion as a guideline only, in conjunction with the other criteria given in the regulation. Any malfunction which causes the applicable emission limits to be exceeded would be treated as a violation of the SIP, but the four criteria would be used in determining an appropriate enforcement response. Finally, EPA would not be bound by any exemption granted by the State.

Comments were received from Indiana industrial sources and the State. All agreed that EPA should approve the regulation, but the industrial commenters questioned some of the points made in the proposal. Below is a summary of the comments and EPA's responses:

Comment: Several of the commenters stated that EPA was unilaterally modifying 325 IAC 1.1-5 when it stated that it would not be bound by any exemption granted by the State. They

[1] Indiana submitted its original malfunction regulation, APC 11, to EPA on June 26, 1979. EPA proposed to disapprove it on March 27, 1980 (45 FR 20432) because of specific enumerated deficiencies. In response to this notice, Indiana committed to revise its malfunction regulation on June 25, 1980 and did resubmit one on January 21, 1981.

[2] In the December 3, 1982 (47 FR 54476) notice of proposed rulemaking, EPA combined the two different provisions of 325 IAC 1.1-5(a) to imply that a 12-month time frame would be used to determine the "normal operational time of the facility." In actuality, compliance with Indiana's malfunction regulations is determined on a quarterly basis. The 12-month time frame in 325 IAC 1.1-5 is used to determine whether curtailment of operations of a facility is an appropriate remedy to a malfunction problem.

[3] Several documents describing EPA's excess emissions policy were cited in the December 3, 1982 proposal. EPA's policy has been described in a more recent EPA memorandum. ("Policy on Excess Emissions During Start-up, Shutdown, Maintenance, and Malfunction," from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, to Regional Administrators I-X, dated February 15, 1983.) The action taken today is entirely consistent with the February 15, 1983 memorandum as well as the documents cited in the proposal.

further asserted that this "modification" is inconsistent with the Clean Air Act in that EPA is limited to only approving or disapproving a State regulation. Any other EPA action requires Federal promulgation.

Response: EPA's approach is entirely consistent with the Act. In stating that it would not be bound by any exemption granted by Indiana, EPA intended to make clear that its approval of the criteria and procedures for the exercise of enforcement discretion with respect to malfunctions did not constitute approval in advance of the outcome of any application of these criteria and procedures by the State. Because Indiana's regulation contains no specific exemptions but only the criteria and procedures to be used in determining whether to exercise enforcement discretion, EPA's action is in no way an attempt to modify the regulation.

Comment: Several commenters stated that the Clean Air Act gives primacy to the states. They noted that it is EPA's policy to defer to the states and concluded that EPA should not take independent action against a source where the State has granted an exemption.

Response: The Clean Air Act does give the states the primary responsibility for the control of air pollution, and EPA often defers to states in determining an appropriate response in implementing the Act.

However, in order to assure that violations of SIPs do not jeopardize the attainment and maintenance of the ambient standards, the Act provides not only for State enforcement action, but also federal enforcement authority under Sections 113 and 120. In approving state regulations containing criteria and procedures for determining whether to take enforcement action, EPA does not, and cannot, relinquish its enforcement authority under the Act. Of course, in determining whether to take an enforcement action, EPA will use the same enforcement criteria it is approving for the State.

This approach is not inconsistent with any of the cases cited by various commenters. In fact, in one case, *Bethlehem Steel* v. *EPA*, 638 F.2d 994 (7th Cir. 1980), the court recognized that EPA would not be bound by a state waiver issued under the provisions of a federally approved Delayed Compliance Order (DCO).

Comment: One commenter mentioned that EPA's statement in the Notice of Proposed Rulemaking that EPA "may take an independent action against a source regardless of any action taken by the State" overstated EPA's authority.

Response: Implicit in EPA's statement was that EPA can take an independent action against a source so long as such action is consistent with Section 113 and any other applicable provision of the Clean Air Act.

Comment: One commenter stated that EPA's proposed action on the Indiana regulation did not comport with its proposed action on the Montana malfunction regulation (December 14, 1982, 47 FR 55965).

Response: EPA's proposed action on the Montana regulation was consistent with its proposed action on the Indiana regulation. Although the commenter did not state how the two proposals differed, he may be referring to the fact the EPA did not explicitly state in the Montana proposal as it did in the Indiana proposal that EPA reserves the right to take independent action from the State on malfunctions. However, as discussed in a previous comment, whether stated or not, this right is inherent in the dual enforcement scheme established by the Act and is always available to the EPA.

Comment: Several commenters note that EPA's new source performance standards (NSPS) under Section 111 of the Act excuse certain violations of emission limitations during periods of start-up, shut-down, and malfunction. They state that EPA should not require more stringent performance from existing sources than from new sources, and, therefore, conclude that EPA should not require existing sources to comply with the SIP during periods of start-up, shut-down, and malfunction.

Response: It should first be noted that Indiana is not required by the Clean Air Act to promulgate any regulations which would allow exemptions from SIP requirements during malfunction or start-up and shut-down. As a matter of policy, EPA will approve narrowly circumscribed malfunction and start-up and shut-down regulations. However, EPA has no authority to disapprove a State malfunction or start-up and shut-down regulations on the grounds that it is too stringent.

In addition, EPA believes it is reasonable to require narrower malfunction and start-up and shut-down regulations for SIP noncompliance than for NSPS noncompliance. The new source performance standards under § 111—unlike the ambient standards promulgated under § 110—are technology based. Attainment of the ambient air quality standards is not a relevant consideration in establishing the NSPS standards; i.e., emissions limits under NSPS are the same, whether the new source is going into a pristine area or into an area which just attains the NAAQS. Therefore, violation of the NSPS standards *per se* does not necessarily interfere with attainment or maintenance of the national ambient air quality standards.[4] In contrast, the Clean Air Act requires that SIP emission limitations assure the attainment and maintenance of NAAQS. Because noncompliance with a SIP emission limit may interfere with such attainment or maintenance, it follows that the use of enforcement discretion with respect to such noncompliance should be narrowly circumscribed.

Comment. One commenter held that a case-by-case consideration of each routine start-up and shut-down, in addition to each malfunction, would result in a great deal of effort and paperwork and is, therefore, neither practical nor equitable.

Response: Indiana, through adopting the reporting requirements of 325 IAC 1.1–5–2, requires a record to be kept of all malfunctions, as well as excess emissions during periods of start-up and shut-down, at any facility where the applicable emission limits are violated. Although complying with this requirement admittedly could take certain resources, this type of operating record is often maintained by sources for their own purposes anyway. The type of record required should facilitate case-by-case review and is a practical method to minimize the effort needed to determine if impermissible emissions have taken place. The requirement is equitable because it applies to all sources in Indiana. In any event, the Clean Air Act provides no grounds for disapproval on the basis cited by the commenter.

Comment: One commenter stated that if EPA treats excess emissions during start-ups and shut-downs as violations, sources which are unable to comply with the applicable emission limitations because of equipment limitations would be unfairly penalized.

Response: The Clean Air Act does not require start-up and shut-down exemptions with respect to SIP limits. Therefore, the absence of a provision for such exemptions in the State malfunction regulation is not grounds for disapproving the malfunction regulation. It should be noted that under EPA's enforcement policy, if the source adequately demonstrates that excess emissions during periods of start-up and shut-down could not have been prevented through careful planning and

[4] Of course, noncompliance with NSPS may interfere with attainment or maintenance of the NAAQS if the NSPS emission limit or requirement is adopted for a specific source as a SIP limit in order to assure such attainment or maintenance.

design and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage, then exceedances of emission limits during periods of start-up and shutdown need not be treated as violations. (See Memorandum on "Policy on Excess Emission During Start-up, Shutdown, Maintenance, and Malfunction," from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation to Regional Administrators I–X, dated February 15, 1983.) Therefore, EPA's enforcement policy does not unfairly penalize sources during start-up and shutdown periods.

Comment: Several commenters note that EPA's excess emissions policy has not gone through formal rulemaking procedures, i.e., proposal followed by final rulemaking action. One commenter additionally concluded that EPA cannot rulemake based on this policy.

Response: The Clean Air Act provides the basis for all EPA actions concerning the SIPs. EPA periodically issues reasoned policy memoranda which clarify sections of the Act and provide guidance to the States as to the meaning of these sections. Because these are merely clarifications of the Act, rulemaking procedures are not required. In any event, EPA is not disapproving Indiana's malfunction regulation, but rather is approving it. The consistency of this regulation with EPA's policy provides no grounds for disapproval.

Comment: One commenter noted EPA's statement in the proposal that, "Any malfunction which causes the applicable emission limits to be exceeded will be treated as a violation of the SIP." The commenter thought this statement to be inherently inconsistent with Indiana's ability to exempt sources from its normal regulatory emission limits by means of an exemption within the source's operating permit conditions. The commenter concludes that this is an example of EPA unilaterally modifying Indiana's regulations without going through promulgation procedures.

Response: In actuality, EPA's statement is not inconsistent with the State's ability to provide an exemption to a source through its operating permit mechanism. EPA stated in its proposal that it cannot approve any regulatory provision which automatically exempts sources from complying with their applicable emission limits. This does not necessarily mean that a source-specific exemption, as opposed to a generic regulatory provision, cannot be approved.

Indiana's operating permit regulation, 325 IAC Article 2, requires discretionary actions by the Indiana Air Pollution Control Board to be submitted to EPA as revisions to the SIP. See 325 IAC 2–1–12. If the State put such an exemption within an operating permit, this would constitute a Board discretionary action and would be submitted as a revision to the SIP. EPA can and will approve all such source-specific actions as long as the requirements of section 110 are met, including a demonstration that the NAAQS would be maintained with such an exemption. Once this exemption is a part of the SIP, the identified occurrence would not be a violation of the SIP and would be allowable. Therefore, EPA has not unilaterally modified Indiana's regulations by its statement.

Comment: One commenter noted that EPA stated in its December 3, 1982 proposal that it had asked the State whether Sections 4(a)(3) and 5(a) automatically exempt sources which malfunction less than 5% of the time or is this number only a guideline to be used in conjunction with the other criteria listed in Section 4(a) in determining a violation. The State responded that the 5% figure is only a guideline to used in determining appropriate action.

The commenter further noted that EPA concluded that it was proposing to approve the four criteria exemption within Indiana's regulation because the criteria listed, including the 5% guideline, do not operate to automatically exempt a source, but instead require discretionary judgment on the part of the enforcing party to determine if enforcement action is appropriate. The commenter stated that the State in its July 2, 1982 letter only mentioned Section 4(a)(3) (the 5% figure) and did not address Sections 4(a) (1), (2), and (4). The commenter implied with this comment that the State may only consider Section 4(a)(3) to be a guideline, with the other elements listed in Sections 4(a) (1), (2), and (4) considered to be absolute standards.

Response: EPA in its letter asked the State to confirm that the 5% criterion is only a guideline to be used in conjunction with the other reporting requirements in Section 4(a) (1), (2), and (4) in determining a violation. Although these Sections were not explicitly mentioned in the State's July 2, 1982 letter, the State concluded that letter by stating: "Therefore, we believe our interpretation of the rule is consistent with that expressed in your letter." From this, EPA concludes that the State concurred with the question asked and does agree that all four criteria must be considered in determining an appropriate enforcement response. Additionally, although Section 4(a)(3) could arguably be considered an absolute standard, Sections 4(a) (1), (2), and (4) all require a judgment call by the enforcing party and, therefore, cannot automatically exempt a source. They, too, then meet the requirements of EPA's excess emissions policy.

In conclusion, after careful review of Indiana's malfunction regulation and the comments received in response to EPA's December 3, 1982 proposal, EPA is approving 325 IAC 1.1–5 as a revision to the SIP. As was noted in the December 3, 1982 proposal, EPA will treat any incomplete or erroneous information provided by a source as a violation of this regulation. Additionally, it will use the 5% criterion as a guideline only, in conjunction with the other criteria given in the regulation. As was also noted in the proposal, EPA's action does not constitute advance approval of any exemptions which might be issued under Indiana's malfunction regulation. Thus, EPA may take independent enforcement action to the extent allowed by Section 113 and any other applicable provisions of the Act, notwithstanding the issuance of an exemption by the State. In determining whether enforcement action is warranted, in the case of malfunctions, EPA will use the enforcement criteria contained in the Indiana regulation.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by Reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

This notice is issued under authority of section 110 of the Clean Air Act, as amended.

Dated: February 3, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

Indiana

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. Section 52.770 is amended by adding paragraph (c)(46) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(46) On January 21, 1981, Indiana submitted its revised malfunction regulation, 325 IAC 1.1–5, to EPA. Indiana clarified its intent concerning 325 IAC 1.1–5 on July 2, 1982.

* * * * *

[FR Doc. 84–3829 Filed 2–13–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 61 and 75

Changes in Assignments of Officials in FEMA Regulations

Correction

In FR Doc. 84–3353 beginning on page 4750 in the issue of Wednesday, February 8, 1984, make the following corrections:

1. On page 4751, first column, in the fourth line of paragraph 5. amending § 61.1, "Administrative" should have read "Administrator".

2. On page 4751, third column, paragraph 21. should have read:

"21. 44 CFR Part 75 is amended by removing the words "Associate Director" and adding "Administrator" in place thereof in the following sections: §§ 75.1, 75.10, 75.11(a) (2 times) and 75.13(c)."

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–386; RM–4363]

TV Broadcast Station in Austin, Texas; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 54 to Austin, Texas, as that community's sixth television broadcast service, in response to a request from the Allandale Baptist Church of Austin.

EFFECTIVE DATE: April 9, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.606(b), Table of Assignments, TV broadcast stations (Austin, Tex.); MM Docket No. 83–386, RM–4363.

Adopted: January 27, 1984.

Released: February 2, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 18846, published April 26, 1983, issued in response to a request filed by the Allandale Baptist Church of Austin ("petitioner"), proposing the assignment of UHF television Channel 54 to Austin, Texas, as that community's sixth television allocation. Petitioner filed supporting comments in which it reiterated its intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Austin (population 345,496),[1] the seat of Travis County (population 419,335), and the capital of Texas, is located approximately 240 kilometers (150 miles) northwest of Houston. Currently, it is served by commercial Stations KTBC–TV (Channel 7); KVUE–TV (Channel 24), KTVV(TV) (Channel 36), and KBVO–TV (Channel 42). Additionally, it is served by noncommercial educational Station KLRU(TV) (Channel *18).

3. As indicated in the *Notice*, UHF television Channel 54 can be assigned to Austin in conformity with the applicable mileage separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

4. In view of the above, and having found no policy objection to the proposal, we believe the public interest would be served by assigning UHF television Channel 54 to Austin, Texas, since it could provide a sixth television broadcast service to the community.

5. Since Austin is located within 320 kilometers (199 miles) of the common U.S.-Mexican border, concurrence of the Mexican government was obtained.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective April 9, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Austin, Texas	7+, *18+, 24, 36, 42–, and 54.

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–3898 Filed 2–13–84; 8:45 am]

BILLING CODE 6712–01–M

[1] Population figures were taken from the 1980 U.S. Census.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 574

[Docket No. 70–12; Notice 25]

Tire Identification and Recordkeeping

Correction

In FR Doc. 84–3421 beginning on page 4755 in the issue of Wednesday, February 8, 1984, make the following correction.

On page 4760, third column, second line of § 574.7(a)(2)(iv), "16 inches" should have read "6 inches".

BILLING CODE 1505–01–M